ALLEN

The Organization & Management Of a Small Corporation In the State of Illinois

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THE ORGANIZATION AND MANAGEMENT OF A SMALL CORPORATION IN THE STATE OF ILLINOIS

by

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THIS IS TO CERTIFY THAT THE THESIS PREPARED UNDER MY SUPERVISION BY

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ENTITLED The Organization and Management of a small corporation in the State of Illinois

IS APPROVED BY ME AS FULFILLING THIS PART OF THE REQUIREMENTS FOR THE DEGREE

OF Bachelor of Arts in the Business Course

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CHAPTER I

The Corporate Form.

In modern industry the greatest aid to development has been furnished by the corporate form of organization. Industry, to be conducted upon so large a scale as has been reached in modern times, demanded some form of organization that would provide for co-operation. There are limits to the abilities of any single individual, and in the management of a large business it is both desirable and profitable to associate a number of individuals, who with their combined energies and abilities are able to manage vast industries. To bring men together, to define the rights and duties of each, and to establish harmony in their activities while working together for the same aims and purposes, the corporate form of organization has been evolved, and adapted to modern conditions. The corporation as developed for modern business organization combines the capital of the many and is managed by the expert and experienced few who are best fitted to direct industry. It gives co-operation in ownership together with the highest efficiencyin management. The large modern business units are all organized under the corporate form.

But it is not only the large organizations of industry which have sought this form. Altho the corporation is most necessary to the larger organization, still very many of its advantages apply equally well to the smaller industrial units. One of the most definite movements in recent years has been the converting of small private and partnership business organizations into corporations.

The state department of this state has never compiled any data regarding the incorporation of industry within the state and figures bearing upon this subject are almost impossible to obtain. The only statistics kept in this state show that since the passage of the general corporation law in 1872, there have been incorporated 63000 companies. This is an average of almost 2000 new corporations every year. In all the time prior to 1872 only 8000 companies had been formed, and these were by special legislative charter. By a careful perusal of the published reports of incorporation, furnished daily by the Secretary of State to the city newspapers, some idea of the average size of the corporations may be gained. Taking the reports from Missouri and Illinois as a basis of study, it was found that a large percentage of companies had capital stock of $5000 or below. A considerable number of these were fixed at $2500. It is safe to say that at least one half of all the companies had a capital stock of $5000 or less. Many are organized at $10000 and some at $25000, but above that amount the companies are few.

The smaller companies represent almost all the purposes for which business is organized. The smaller ones are retail business and small manufacturing industries such as bakeries, creameries, etc., which operate in small towns. The larger sized corporations ranging in capital from $10000 to $25000 are usually organized for purposes of manufacturing in towns and smaller cities. Flouring mills, Ice Plants and all kinds of manufacturing done upon a small scale are thus organized. The larger corporations are found located mainly

in cities and include manufacturing on a large scale, wholesale houses, and all commercial activity covering a large field.

The advantages of the corporate form of organization which apply equally to the large and small company are many, but the chief ones are as follows; First, the limited liability feature. The members of a partnership are all liable to the full amount for all debts of the firm. But the liability of a corporation extends only to its corporate assets, and of the shareholders only to the extent of their respective holdings fully paid in. Second! The "good will" of the business which in a partnership or private business might be lost by the death of the proprietor or a partner; in a corporation is not affected by anything except the failure or dissolution of the company. Third. The corporation continues and no dissolution is required or imposed by the death of a shareholder. Fourth. In case of a failure it is easier to re-organize a corporation since the individual names of the stock holders have largely escaped the stigma of insolvency. Fifth. the insolvency of any shareholder has no effect upon the corporation, or its shareholders, whil e it would ordinarily compel the liquidation of a partnership.

Private business corporations are divided into those with stock and those without stock. The latter are known as membership corporations. The stock corporations have a capital stock divided into shares. Corporations not for pecuniary profit are not organized as stock corporations.

CHAPTER II

Charter and Incorporation.

"A corporation is an artifical being, invisible, intangible, and existing only in contemplation of law". This is the famous definiton as given by Chief Justice Marshall. A corporation can come into existence only through the consent of the State. The State grants the charter which creates the corporation and defines its powers. It can possess only those powers given to it either expressly or as incidental to its very existence. In earlier times charters were obtained only by special acts of the legislature. This was a costly and tedious method, and consequently only comparatively few corporations existed as is evidenced by the fact that from 1818 to 1872 only 8000 corporations were organized in this state. In the latter year the general corporation law was passed. Under this law a corporation may be formed for any lawful purpose except banking, insurance, real estate brokererage, operation of railroads, and the business of loaning money. No special privileges may be granted to any corporation.

Under this general law, any number of men, not less than three nor more than seven, may propose to form a corporation. They must make a statement to this effect and set forth the name propsed, and the object for which formed, the amount of capital stock and the number of shares of which the stock shall consist, location of principal office, and duration not to exceed ninety nine years. No license will be granted for a company having a name the same or similar to a

existing company. The o bjects for which it is formed may be many in number but all must be named. The shares of capital stock shall be not less then $10 nor more than $100 each. This statement must be signed by each incorporator and duly acknowledged before some officer in the manner provided for the acknowledgement of deeds. If the purpose proposed is lawful the Secretary of State will issue to such persons a license as commissioners to open books for subscription to the capital stock of said corporation.

As soon as the capital stock has been fully subscribed the commissioners shall convene a mee ting of the subscribers for the purpose of electing directors or managers. Notice either written or printed must be mailed at least ten days before the time fixed, to each subscriber. As soon as the meeting is held the commissioners must make a full report of proceedings, including a copy of the notice sent to subscribers, a copy of the subscription list, a statement of the amount of capital, not less then one half actually paid in, the amount not paid in, if any of the capital has been paid in property the fair cash value there reported, the names of directors elected and their respective terms of office. This report must be sworn to by at least a majority of the commissioners, and shall be filed in the office of the Secretary of State. The Secretary then issues a certificate of complete organization to the company, making a part thereof all the organization papers filed in his office. The whole shall then be recorded in the office of the recorder of the county in which the chief office is located. The

company must proceed to business within two years or the license will be deemed revoked.

Corporations thus formed may sue and be sued, may have a common seal, may own as much real estate as is necessary in transacting their business, may dispose of the same, may borrow money and pledge their property for the payment thereof and may exercise all powers necessary to effect the objects for which they were formed.

The expenses of organization vary with the size of the corporation. In return for the license the corporation pays $30 on a capital stock not exceeding $2500 and $50 on a capital not larger than $5000. For capitalizations over $5000, a fee of $1 per additional $1000 is charged. The filing fee is $1 and, and affixing seal and certificate to articles of incorporation $1. To the Recorder of Deeds ten cents per 100 words for recording. From this it is seen that the expenses of incorporation for a small company are not large. For a corporation of $10000 capital the cost would be about $60 for fees. The annual report requires a filing fee of one dollar.

CHAPTER III

Capital Stock

The capital and capital stock ofa corporation are two very different things. The capital is the total assets of the company. All of its property at the actual valuation is the capital. The capital stock is the amount of stock authorized by law that the company may issue. This amount is fixed in the charter and cannot be changed except by formal amendment agreed to by the stockholders. In point of fact the amount of stock is very seldom changed. At the time of organization the capital stock issued usually represents the assets of the company. Either the stock is issued fully paid up or in the case of converting a private or partnership business into a corporation, just enough stock is issued to cover the assets of the old business. After the corporation has been in business for a time the capital exceeds the capital stock and in a successful business should continue to do so.

Capital stock is divided into two general classes, common and preferred. The rights of the preferred stock are set forth either in the charter or by laws of the company. Preferred stock has a preference over all other stock in the matter of dividends. It is not, like a bond issue, guaranteed as is sometimes stated, but has a first claim on dividends. Usually it is cumulative in that when dividends are passed the right to them still exists and as soon as earned they are payable before any distribution can be made to other

stock. The rate of dividend on preferred stock is always definitely fixed. After this amount has been paid the common stock has a right to receive dividends up to an equal amount. After that the dividends are divided equally. In this state there is no provision for classes of stock.

Common stock is the general or ordinary stock without any special provisions. There is no guarantee as to dividends. In winding up a business the preferred stock would first have a claim to any dividends then due, but after this was satisfied it would share in a distribution of the assets just as would the common stock.

Unissued stock is in itself a nullity. It is merely the unexercised right to issue stock. In the charter a certain amount of stock is authorized. Under the Illinois law one half must be full paid before the certificate of organization is given. This unissued stock is held for future needs and may be issued at any time of future need without the formalities that would otherwise be required. This unissued stock is only used in small corporations when the company is over capitalized and it is expected to use this stock for raising working capital.

Treasury stock is stock which has been issued and full paid, then comes back into the treasury of the corporation by purchase or gift. This stock is full paid and entails no obligations upon future purchase, even though acquired below its par value. Treasury stock may be held in the name of the treasurer or the corporation itself. It is an asset, but may neither be voted nor receive dividends. It is liable

to taxation the same as any other issued stock.

The term guaranteed stock is sometimes wrongly applied to preferred stock. Guaranteed stock is really the stock of one corporation whose dividends are guranteed by another corporation.

Watered stock is stock for which the corporation has not received full payment either in cash, property, or services. Stock is more or less watered according to the property it represents. It may be created either by issuing stock in exchange ~~for proper~~ for property or services, by an issue insufficiently supported by corporate property, as in a script dividend, or as a bonus with bond issues. In small companies there is little incentive to stock watering as the stock is usually closely held. The stock is generally divided among a few men who are active in the management of the business. The stock is issued upon a basis of actual money paid in or upon a fair valutaion of property taken over.

The ownership of stock is evidenced by stock certificates. Every stock holder of the company whose stock has been paid for in full has a right to certificates showing the amount of stock standing on the books of the company in his name. A payment of a subscription even without a certificate makes one a member of a corporation. The certificates are bound together in a book called the stock certificate book. It is in charge of the secretary of the company whose duty it is to issue the certificates. They must also be signed by the President and Secretary. The

certificates are numbered consecutively and each one is attached to a stub. When a certificate of ownership is issued the stub must be filled out to show all the transaction; the number of shares transferred, to whom, and that the stock was fully paid and non assessable. The transferee must sign the stub as receipt for his certificate. Stock endorsed in blank may be transferred at will. But the ownership of record remains in the original holder and he is entitled to all powers, and to receive dividends until the stock is transferred on the books of the company.

The transfer of stock is provided for in the by laws and must be made only upon the proper books of the company. The surrendered certificates after being endorsed are canceled by the Secretary and attached in the certificate book to the corresponding stubs. New certificates are then issued to the parties entitled there to. In case only a part of the stock is wanted transferred the original certificate is returned and canceled and new certificates are issued conveying part of the other shares to the new purchaser and the remainder is reconferred upon the original holder, by issuing a new certificate to him, covering his remaining holdings. There is no state statute covering transfer of stock except in the case of stock upon which installments are still due. All transfers of this kind of stock must be recorded in the office of the county recorder in which the chief office is located. For future assessments upon this stock both assigner and assignee are jointly liable.

The stock in a small corporation is usually very closely held. In many cases the stock is largely held by one man who has reorganzied his business from the private form into a corporation in order to obtain the advantages of limited liability and contimuity of existence. In this case all the stock is held in the one name of the principal owner with the exception of a few shares which he confers upon associates or employees.in order to fill out the directorate to the required number. These latter persons are known as "dummy" directors as they have no real interest in the business, and are only given stock to a nominal amount in order to comply with the law.

The other general class of small corporations besides the "dominant shareholder" type is the one in which a number of men associate themselves and contribute funds equally for the development of some enterprise in which they are all interested. In this case they elect officers and managers from among their own number, and likely all the stock holders will also be directors. In both these types of small corporations all the stock is held by persons directly interested in the management of the company. The stock remains closely held and very few transfers are ever made.

CHAPTER IV

Rights and Liabilities of Stockholders.

The stockholders of a corporation are those who actually hold its stock, or who have subscribed for its stock and had their subscriptions duly accepted by the corporation. The mere acceptance of the subscription constitutes the subscriber a stockholder. Neither payment of the subscription nor the issuance of a stock certificate is necessary to the establishment of his standing.

The individual stockholder has but little part in the active management of a croproation. He has several fundamental rights and a few powers, but beyond this the management of affairs is in the hands of the board of directors which he helps to elect. Except for his specified rights the stockholder, of no matter of how many shares, has neither the right nor the power to interfere in any way with the management of the company or of its property. The first right of a stockholder is to have notice of and to attend all stockholder's meetings, either in person or by proxy. Thirty days notice, either personally or by mail must be given, and also the notice published for three weeks. The annual meeting is the only regular meeting of stockholders and is as a rule the only occasion upon which the stockholders actively participate in the affairs of the company. The order of business at an annual meeting is about as follows,

1. Calling of Roll
2. Proof of notice of Meeting

3. Reading of Unapproved Minutes.
4. Annual reports of officers and committees.
5. Election of Directors.
6. Unfinished business.
7. New business
8. Adjournment.

Special meetings of stockholders may be called at any time upon due notice by a vote of the board of directors. Two thirds of the full paid stockholders may also call meetings by all signing notice, and filing copy thereof with the president, sending one copy to each director and publishing copy for three weeks. The secretary must record all facts in regard to it. Each stockholder has the right to cast one vote for each share of stock held, upon every question coming before the meeting.

All other specific general rights of stockholders are as follows, First, to share in proportion to the amount of stock held in all dividends declared upon the common stock. Second, every stockholder has the right at all reasonable times, by himself or by his attorney to examine the records and books of account of the corporation. Third, in the event of dissolution of the corporation to share in like proportion in any assets remaining after all corporate debts and obligations have been paid. These items as enumerated constitute all the definite rights of the stockholder. Aside from these he has several powers delegated to the stockholders as a class. Chief among these powers is that of choosing

directors or managers.

In electing directors the Illinois law provides that the voting must be cumulative and in no other manner. This makes it possible for the holder of any considerable number of shares to become a director. The law is as follows: "Every stockholder shall have the right to vote in person or by proxy for the number of shares owned by him, for as many persons as there are directors to be elected, or to cumulate such shares and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal, or to distribute them on the same principal among as many candidates as he shall think fit."

The amendment of the charter is another power of the stockholders. This may be done by a special meeting called for the purpose, and any amendment must be assented to by a two thirds vote of all the stock. Certificates of the proceedings verified by the president, and under the corporate seal must be prepared in duplicate and one copy filed in the office of the Secretary of State, The other copy must be filed and recorded in the Recorder's office of the county in which the principal office of the corporation is located. Notice of all such amendments must also be published for three weeks. The purposes for which the charter may be amended are as follows; to change the name or place of business; to enlarge or change the object for which the company was formed; to increase or decrease capital stock; to changethe number of directors from an even number to an

odd number and to consolidate the corporation with any other corporation of the same kind, or in the same vicinity.

The only other collective powers of the stockholders are, to pass resolutions and recommendations, to authorize the sale of assets and take any other vital action, to bring about the dissolution of the company, and toexercise any other specially conferred charter powers. In voting at stockholders' meetings, an executor, administrator or guardian may represent the stock in his hands, and may vote accordingly as a stockholder, and every person who shall pledge his stock may, nevertheless, represent the same at all meetings, and may vote accordingly as a stockholder.

The liability of a stockholder in a corporation is limited. In no case is he liable for more than the full par value of stock owned or subscribed by him' He is liable to the company or its creditors for any installments remaining unpaid upon his stock. He may also be liable to the creditors for any stock held by him that is not full paid. Here the liability would be the difference between the price received by the company for such stock and its par value. If dividends are declared from the capital of a company, the stockholders are liable to the creditors for any amount so received by them. There can be no liability for dividends declared from profits even though the company afterwards becomes insolvent. When stock is assigned before it was fully paid both the assignee and the assignor are jointly and severally liable but if the assignee has notice that such stock is not fully paid, he is primarily liable.

CHAPTER V

Directors and Officers.

The board of directors is the most important feature of a corporate organization. Elected by the stockholders, all the affairs of the company are entrusted to the directors who choose the other officers of the company by whom the business is actually carried on. It is the director's duty to act with all proper care and diligence in looking after the affairs and property of the company and they are responsible for the proper care and management. The directors are elected at the annual meeting of the stockholders, usually to serve for the ensuing year. The Illinois statute limits the number of directors to a minimum of five and a maximum of eleven. The number shall not be increased nor diminished, or their term of office changed without the consent of a majority of the shares of stock The law also provides thata classification of directors may be made into three classes. At the first election of directors the classification is made and the first class elected for one year, the next class for two years, and theother class to hold office for three years. Then at each annual election only one class is elected. This is devised to prevent sweeping changes in the board. The plan is not necessary nor usual in a small or closely held corporation.

In Illinois there is no statuary qualification required of a director. In most states the ownership of at least one share of stock is necessary. Here, married

women or any person capable of contracting may become a director. It is customary for a director to hold at least one share of stock. The directors have wide authority, in that they usually adopt the by laws. They have that power in this state. They alsochoose and fix the compensation of other officers and have general control of affairs.

Meetings of the board are provided for in the by-laws and are usually held once a month. In the smallest companies where the directors activelymanage the business in their capacity as officers, meetings are only held regularly once a year. Special meetings may be called when necessary but it is necessary that written notice of such meetings should be mailed to every member of the board, specifying the time place and purpose of such meeting. A quorum must be prescribed in the bylaws, and this should consist of not less than one half of all the members of the board. To do business with less than one half is not wise and often leads to trouble and dissension among directors. Compensation for directors in small corporations is not general. When granted it must be specifically so stated in the bylaws. When allowed in large corporations it ~~is,~~ usually amounts to five or ten dollars for each attendance upon meetings.

The liablities of directors are definitely stated in the statutes of this state. "If the indebtedness of any corproation shall exceed the amount of its capital stock, the directors and officers of such corporation assenting thereto, shall be personally liable for such excess to the

creditors of such corporation." They are also liable for declaring any dividend when company is insolvent, or which would render it insolvent or diminish its capital. In such case they are liable to the extent of corporate debts then existing, and also contracted while they remain in office. If they assume to act as a corporation before all the stock has been subscribed for in good faith, they are liable for all debts.

The officers of a corporation are specified as president, secretary, and treasurer. These officers are elected by the board of directors and their compensation is also fixed. Any other necessary officers or agents may be chosen by the directors. The duties of these officers are generally specified in the bylaws and are nearly the same in every corporation. The directors may require the officers to give bond, and may remove any officer when the interest of the corporation shall require.

In most of the small corporations the chief stock holders are elected to the offices of president and secretary and treasurer. They actively manage the business while filling these offices and are at the same time directors of the corporation. This concentrates the entire workings of the corporation into a very few hands. The stock holders elect themselves directors. Then as directors they proceed to vote themselves into the executive and actual management offices of the corporation. In this way harmony exists among all

parts of the corporation. The formal regulations of organiation are complied with and the law is followed in all cases, for the charter may be revoked if this is not done. But in reality the directors seldom meet except in their annual yearly meeting following the election of directors by stockholders. The business is really conducted by consultation and mutual consent among the stockholder-directors and officers.

CHAPTER VI

General Management.

The general management of a corproation either large or small, is regulated by the bylaws. The methods and practices are widely different in large and small companies but it is required that every corproation adopt a set of bylaws, and within these are set forth all the general rules and regulations for the management of the corporation. The adoption of bylaws is generally the stockholders' right but in Illinois this power is delegated to the board of directors. In nearly all corporations of small size even in other states, this right is given to the board because of the quickness of action when an amendment is desired. The bylaws are the rules of proceedure for the corporation and should collate and repeat the provision from all sources of control. The corporation is governed by three sets of laws, first, the consitution and general laws of the state, second, the charter, and third, the general corporation laws of the state. The bylaws should select from these sources all the rules and regulations which directly bear upon the management of the corporation and the entire working proceedure should appear here. They are set forth for the guidance of the officers and any other source is seldom consulted. These laws being required by staute are just as essential to a small corporation as to a large company, These laws should provide working rules for stockholders' meetings, where and

when held, determine a quorum and outline the order of business. The same general class of regulations is necessary for the directors' meetings. The duties of each officer should be outlined, the law as to dividends, and any sundry provisions as to corporate seal, books, etc., should be set forth. Provision for amendments should also be made. The bylaws after adoption should be entered in the minute book of the corporation and frequently a copy is given each stockholder and director for his guidance. In managing small corporations formal regulations are quite generally waived. Where the larger stockholders are directly active in the management and complete harmony exists between all parties concerned this can be easily done, and if the financial condition is flourishing no harm may result. But any stockholder or creditor has a right to object if the bylaws are not observed, and such acts may be declared illegal. This in itself is punishment enough to cause the management to procede with caution, and to at least secure the consent of all stockholders before any important action is taken.

The books of the corporation are provided for in the bylaws. A minute book is required to be kept by the secretary. In this book is placed first a copy of the certificate of incorporation, and then a copy of the bylaws. Minutes or reports of all stockholders' and directors' meetings must be placed in this book. It is essential that these be correctly kept as they constitute the only authentic record of actions in these meetings. If litigation should

occur the minutes would constitute the only authentic accounts of corporate actions. The sta~~utes~~tutes of the state require that every corporation shall keep books of account at its principal office and these books must be open to inspection by any stockholder or his attorney at any time.

In small corporations bond issues are very seldom. Usually enough stock is sold to completely pay for all property taken over and then loans are easily obtainable in moderate amounts. The directors are held personally liable for any debts over the amount of the capital stock. Dividends must be authorized by the board of directors, and must be paid out of the profits only. If directors or officers declare and pay dividends when the corporation is insolvent, or which would diminish the amount of its capital, or render it insolvent, such officers assenting thereto shall be jointly and severally liable for all debts of such corporations, either then existing or afterwards contracted while such officers remain in office. Aside from this law there is no regulation as to the size of the dividends which may be distributed if earned. Dividends when declared must be general on all the stock. The funds distributed go to the stockholder of record at the time of distribution even though the stock is no longer in his possession. The directors designate the bank in which corporation funds shall be kept and the treasurer has no choice but to follow their orders.

In any corporation, one important feature should be a proper protection of the interests of the minority stockholders. At best the rights of small holders are scant.

They are entitled to honest administration of corporation affairs, and enough publicity to acquaint them with conditions and make them able to judge as to whether or not the business is being properly conducted. They also should have knowledge of contemplated action by the majority in time to protect their interests. In this state cumulative voting is made legal in choosing directors. If the minority interests will act together this gives them a possibility of having at least one representative upon the board of directors. This is the best form of protection for a minority interest. They are then informed of all actions of the board of managers and are kept in touch with all vital actions of the corporation. In smaller corporations it is customary to have all the stockholders also mem bers of the board of directors.

If all the directors of a corporation are assembled together even though no call has been issued, and if it is within the state in which the corporation is licensed, a business meeting may be held and its acts will be valid. A failure to elect directors on the day named in the bylaws, or for which notice was sent, will not work a forfeiture of the charter, or dissolve the corporation, but the election may be held at any time after a proper notice has been issued. The old officers will continue in office until their positions are legally filled.

All corporations have the right to protection and use of their corporate names, and are capable of prosecuting and defending actions in law to defraud them. The corporate seal is in the keeping of the secretary and must be used in

the execution of corporate deeds, mortgages and transfers. The affixing of the corporate seal, altho prescribed, is not necessary to bind the company. No particular form of seal is specified but each corporation must have one and it should have the name of the corporation, date, and state upon it.

An executor or administrator may represent the stock in his hands at all meetings, and may vote accordingly as a stockholder, and any person who pledges his stock may still represent the same at all meetings, and vote accordingly as a stockholder. An executor, administrator, or guardian is not subject to any personal liability as a stockholder of a corporation in whose meetings he may represent stock holdings. Neither is any person holding pledged stock to be held liable as a stockholder. Upon the dissolution of a corporation for any cause, if any debts remain unpaid, suit may be brought against stockholders whose stock has not been full paid and if any stockholder is unable to meet or satisfy his portion of the debts, then the amount shall be divided equally among all the other remaining solvent stockholders. This provision insures the creditors of a corporation to the full amount of the capital stock outstanding. In Illinois, corporations for real estate brokerage do not organize under the general corporation act. Other corporations are not allowed to hold real estate unless it is necessary and suitable for the business of the corporation. Each year within twenty days from the first day of December the president, or some officer of every corporation must make a statement in writing of all

real estate acquired in securing any debt or liability due to the corporation, and the time of acquiring title thereto. This statment must be sworn to and recorded in the county recorders office and also filed in the Secretary of State's office. All real estate so acquired in satisfaction of indebtedness must be offered at public auction at least once every year, after giving due notice thereof, and such real estate must be sold when the price offered is not less than the claim of the corporation including interest, costs, and other expenses. If, within a period of five years the corporation does not sell such real estate, either at public or private sale, the state's attorney must proceed against such corporation and the court will order the property sold, and after proper and just fees are taken out the proceeds will be turned over to the offending corporation.

In Illinois three reports or statements are demanded by the state from every corporation. The annual report must be filed with the Secretary of State between February 1st. and March 1st. This report states the location of the principal office; the names of its officers, their addresses, and expiration of their terms; whether or not the corporation is pursuing an active business under its charter, and the kind of business engaged in. The report must be signed by an officer under the corporation seal, and accompanied by a fee of $1.00 for filing. The statement of real estate acquired has been explained above. In September an affidavit must be sent the Secretary of State showing that the company

is not violating the laws against trusts. A fine of $50.00 is prescribed for each day's failure to file this report.

These statements must be correct, and if any report or statement made public by corporate officers shall be false in any material representation, all the officers who signed it knowing it to be false shall be jointly and severally liable for all damages arising.

CHAPTER VII

Termination of Existence.

One of the chief advantages of the corporate form of industrial organization is that it has a continuity of existence. Unlike a partnership, the death of a member of the corporation, that is a stockholder, in no way affects the life of the corporation. Unless the business is a failure, and has to be brought to a final settlement for that reason, the corporation will live on until the expiration of its charter. In Illinois the duration of a corporation is not to exceed ninety nine years. Even at the expiration of that period the corporation may renew its charter. The law provides that the Secretary of State shall not issue a license to any person or persons to incorporate under the name of any existing corporation organized under the law of this state, until the expiration of thirty days from and after the expiration of the existence of such corporation; and that "the corporation enjoying such name shall have the exclusive privelege of becoming incorporated under the same name at any time, within the said thirty days." The re-incorporation shall be under the provisions of the general incorporation act. This makes the life of a corporation practically continuous unless its license is revoked or it voluntarily dissolves, or is forced to close its business because of insolvency.

Corporate existence may be brought to a close in two general ways; either by the voluntary act of the corporation as in a Merger with another corporation, dissolution by stockholders, or simply by abandonment; or by outside influence, as through forfeiture of the charter to the state, or by insolvency and financial failure. Voluntary termination is usually the case but every year numbers of corporations are forced into bankruptcy. Forfeiture of charter is seldom.

Termination by insolvency is now regulated by the national bankruptcy law which takes the place of separate state legislation. Under the common law, insolvency occurs when the debts cannot be met when due, but under the new national law one is insolvent only when the assets, fairly valued, are insufficient to pay all debts. Corporations come under the same law as individuals. A bankrupt may voluntarily turn over its property to the court to be administered, or creditors may apply to the court to compel the relinquishment of management. In either case the court appoints officers to convert the property into cash, and pay all debts amd lawful claims pro rata. Whatever assets remain are then divided among stockholders in the insolvent corporation. Any division of assets must be made in such a manner that all shares of stock will receive an equal amount. The capital stock and property of a corporation are held as a trust fund for stockholders while solvent, and when insolvent they are held for the payment of all debts first, then for distribution to stockholders. While a sum remains unpaid, and liable to call, on its stock, a corporation is not insolvent

though it has no tangible property. The directors are empowered to demand and enforce full payment upon such amounts due. Any device by which members of a corporation seek to avoid liability for full value of stock, such as agreement that stock shall be full paid up, is void as to creditors claims.

The right to ~~appeal~~ revoke or amend all corporate charters is reserved by the state. This power may, however, not be exercised arbitrarily, or unreasonably. The corporation law specifies certain conditions the noncompliance with which works a forfeiture of the charter. Unless the company shall be organized and shall proceed to business within two years after the date of license, the license shall be deemed revoked and all proceedings thereunder void. If a corporation ceases to do business or exercise its corporate franchises, the attorney general may proceed in the circuit court to dissolve it. A failure upon the part of a corporation to file its annual report with the Secretary of State, is considered "prima facie" evidence of being out of business and shall work a forfeiture of the charter. Each year about September first an affidavit must be filed with the Secretary of State certifying that the corporation has not violated the anti-trust law. Failure to file such an affidavit involves a heavy fine, and a violation of the statute against trusts, pools, and corporations lays the corporation liable to forfeiture of its charter.

Of the voluntary metods by which a corporation may ter-

minate its existence, dissolution is the most common, and generally satisfactory. This step is taken upon the initiative of the members of the corporation. The business and property of the company are first sold, and all debts paid, after which the remaining assets must be distributed among the stockholders. The directors may then call a meeting of the stockholders for the purpose and by a two thirds vote of the whole capital stock the corporation may be dissolved. A full record of all the proceedings, showing also that all debts have been paid and assets distributed must be executed by the president and secretary under the corporate seal, and recorded in the recorder's office. Notice of the dissolution must be published three successive weeks within three months, and a copy of the record certified by the Recorder filed in the office of the Secretary of State. The dissolution for any cause of any corporation, does nottake away or impair any remedy against the corporation, its stockholders, or officers for any liabilities incurred previous to its dissolution.

The other two methods of voluntary termination are by merger, and by simple abandonment. The merger with another corporation is accomplished by a two thirds vote of all capital stock. This is allowed with another company of the same kind or engaged in the same general business, and in the same vicinity. Care must be exercised not to violate any clause of the statute regulating pools, trusts, and combinations, in effecting such a merger. The simple expedient

of abandonment is not recognized by law. It is only used when the corporation has been an absolute failure and all the funds have been exhausted. The trouble and expense of a formal dissolution are avoided, and a virtual dissolution is effected. This is not a legal method and is very seldom used. After the expiration of the charter, or dissolution for any cause a corporation still continues its corporate existence for two years, for the purpose only of collecting debts, and selling and conveying the property and effects. If the business is not wound up the stockholders may be held liable as partners in any subsequent transactions.